

# **EXHIBIT 2**

**From:** [Johnson, Andy](#)  
**To:** [Anderson, Richard](#)  
**Cc:** [Grass, Robert](#)  
**Subject:** RE: Kenneth Smith - request for unredacted protocol  
**Date:** Tuesday, September 19, 2023 8:45:09 AM

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External E-mail

Rich:

We believe that we are entitled to an unredacted copy of the protocol especially given that an execution by nitrogen hypoxia has never been attempted anywhere before. To address your security concerns, and as we have tried to make clear before, we are willing to receive information on the condition that we will not disclose the information to anyone other than for purposes of litigation, if any. We would agree to a protective order of confidentiality along those lines and would further agree to file any such information (if and when such filing became appropriate) under seal. The case you cite relates to media access to protocol information. The only purpose for the media to seek access to information is to publish that information to the general public. The issues raised by a media request for access to information do not bear on our request.

Nevertheless, barring the provision of an unredacted copy of the protocol and without waiving our right to seek an unredacted copy of the protocol and given your response, we request the following:

- Identify all the equipment to be used in the planned execution of Mr. Smith and the manufacturer of the equipment.
- Identify the source of the nitrogen to be used in the planned execution of Mr. Smith.
- Permit Mr. Smith's consultant to inspect the equipment to be used in the planned execution of Mr. Smith.
- Permit Mr. Smith's consultant to observe a training session for the planned execution of Mr. Smith.
- State what procedures will be followed to "place[] and adjust[] [the mask] on the condemned inmate's face" as described in paragraph X.v of the protocol.
- State the process by which "the Execution Team Captain [will] verif[y] that the mask has been properly placed" as stated in paragraph X.v of the protocol.
- Identify what procedures ADOC personnel will use to ensure that the mask is airtight after it is placed and fitted onto the condemned inmate's face.

Thanks,

Andy

**Andrew B. Johnson**

Partner | [Bradley](#)  
[ajohnson@bradley.com](mailto:ajohnson@bradley.com)  
d: 205.521.8295

**From:** Anderson, Richard <Richard.Anderson@AlabamaAG.gov>  
**Sent:** Wednesday, September 13, 2023 10:29 AM  
**To:** Johnson, Andy <AJohnson@bradley.com>  
**Subject:** RE: Kenneth Smith - request for unredacted protocol

Andy,

The redactions made on the ADOC protocol are limited to those issues that directly bear on the security and safety of ADOC staff and inmates. Careful consideration was given to limiting redactions in order to provide the public with an accurate understanding of how nitrogen hypoxia executions would be carried out. Given ADOC's vital interest in preserving that security, ADOC cannot provide an unredacted copy of the protocol. I would point out that this is in line with what type of redactions that were approved in *Comm'r, Alabama Dep't of Corr. v. Advance Loc. Media, LLC*, 918 F.3d 1161, 1170 (11th Cir. 2019).

However, with our valid security concerns in mind, perhaps you can share what you think the redacted material would provide you vis-à-vis data or information. It may be that we can assist you with your concerns through other means.

Kind regards,

Rich Anderson

**From:** Johnson, Andy <AJohnson@bradley.com>  
**Sent:** Tuesday, September 12, 2023 1:33 PM  
**To:** Anderson, Richard <Richard.Anderson@AlabamaAG.gov>  
**Cc:** Robert M. Grass (robert.grass@arnoldporter.com) <robert.grass@arnoldporter.com>  
**Subject:** RE: Kenneth Smith - request for unredacted protocol

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Rich –

Following up on the request below for an unredacted protocol. Please let us know the State's position on this request.

Thank you,

Andy

**Andrew B. Johnson**

Partner | [Bradley](#)  
[ajohnson@bradley.com](mailto:ajohnson@bradley.com)  
d: 205.521.8295

**From:** Johnson, Andy <[AJohnson@bradley.com](mailto:AJohnson@bradley.com)>  
**Sent:** Wednesday, August 30, 2023 1:37 PM  
**To:** [Richard.Anderson@AlabamaAG.gov](mailto:Richard.Anderson@AlabamaAG.gov)  
**Cc:** Robert M. Grass ([robert.grass@arnoldporter.com](mailto:robert.grass@arnoldporter.com)) <[robert.grass@arnoldporter.com](mailto:robert.grass@arnoldporter.com)>  
**Subject:** Kenneth Smith - request for unredacted protocol

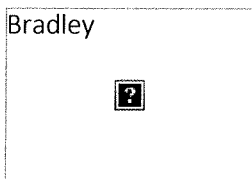
Rich –

I write to request that you please provide an unredacted copy of the Alabama Department of Corrections Execution Procedures as of August 2023 (“Procedures”). The copy you have provided is heavily redacted. There are key areas that are unintelligible with the redactions and preclude a complete assessment of how the Department plans to carry out Mr. Smith’s execution by nitrogen hypoxia, which, as you know, neither the Department nor any Department of Corrections anywhere has done or even attempted before. In addition, Section V.F.ii of the Procedures refers to a “spiritual advisor nitrogen hypoxia acknowledgment form” that a spiritual advisor must review and sign to be allowed access to the execution chamber if nitrogen hypoxia is the method of execution. Please provide a copy of that form as well.

We are happy to work with you to make sure that the contents remain confidential and only used with respect to our litigation.

Thanks,

Andy



**Andrew B. Johnson**

Partner

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